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Property

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Property; common interest developments—meetings

Civil Code § 1363.05 (new); § 1363 (amended).
AB 46 (Hauser); 1995 STAT. Ch. 661

Existing law governs the functioning of common interest developments[1] through the Davis-Sterling Common Interest Development Act.[2] This act designates associations[3] as the form of management of common interest developments and establishes parameters for their activities.[4]

Chapter 661 enacts the Common Interest Development Open Meeting Act which regulates meetings[5] of the boards of directors of associations.[6] Existing law allows association members to attend any meeting of the board of directors except during executive sessions in which the board is to discuss litigation, contracts with third parties, discipline of members, or personnel matters.[7] Chapter 661 creates an exception to the closed board meetings and allows association members who may be fined, penalized, or otherwise disciplined to request and attend an executive session of the board.[8] Chapter 661 requires that association members be notified of the time and location of any meeting at least four days before it is scheduled to take place.[9] Chapter 661 makes provisions for the board to call an

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1. *See* CAL. CIV. CODE § 1351(c)(1)-(4) (West Supp. 1995) (defining "common interest developments" as either a community apartment project, condominium project, planned development, or stock cooperative).

2. *Id.* §§ 1350-1374 (West Supp. 1995).

3. *See id.* § 1351(a) (West Supp. 1995) (defining "association" as a nonprofit corporation or unincorporated association which is formed to manage a common interest development); Matthew T. Powers, Note, *Homeowner Association Standing in California: A Proposal to Expand the Role of the Unit Owner*, 26 SANTA CLARA L. REV. 619, 619-20 (1986) (recognizing the need for an association in a condominium setting to perform such managerial duties as maintenance of common areas, enforcement of restrictive covenants, assessment of maintenance costs to the unit owners, and other necessary tasks).

4. CAL. CIV. CODE § 1363(a) (amended by Chapter 661).

5. *See id.* § 1365.05(f) (enacted by Chapter 661) (defining a "meeting" to be any gathering of a majority of the members of an association's board of directors to address predetermined business of the association which is not subject to an executive session).

6. *Id.* § 1363.05(a)-(h) (enacted by Chapter 661).

7. *Id.* § 1363.05(b) (enacted by Chapter 661); *see id.* (incorporating 1993 Cal. Legis. Serv. ch. 151, sec. 1, at 1172); *cf.* ARIZ. REV. STAT. ANN. § 33-1248(A)(1)-(4) (Supp. 1994) (permitting closed meetings when the board is to consider personnel issues, legal advice from an attorney, litigation, or enforcement of association rules and regulations); TEX. PROP. CODE ANN. § 82.108(b) (West 1995) (preserving the right of board of directors to hold a closed executive session to consider personnel decisions, pending litigation, contract negotiations, enforcement actions, matters regarding the privacy of unit owners, or pertaining to the confidentiality of affected parties).

8. CAL. CIV. CODE § 1363.05(b) (enacted by Chapter 661).

9. *Id.* § 1363.05(g) (enacted by Chapter 661); *see id.* (providing that no notice is necessary when the association's bylaws establish a specific date for meetings); *cf.* NEV. REV. STAT. ANN. § 116.3108 (Michie 1993) (instructing the executive board of a common-interest community to provide between 10 and 60 days notice of any meetings to the unit owners through hand-delivery or by mail); OR. REV. STAT. § 100.420(3)(a) (1990) (requiring condominiums in which most of the residents are owners to notify members of meetings at least three days in advance); TEX. PROP. CODE ANN. § 82.108(a) (West 1995) (allowing each association to establish its own notification requirements within its bylaws); WASH. REV. CODE ANN. § 64.34.332 (West

emergency meeting to address unforeseen matters which demand urgent attention without any prior notice.[10]

COMMENT

Community associations have been likened to semi-governmental organizations because many of the services which they provide are similar to those provided by municipal governments, such as security, waste removal, utilities, lighting, and road maintenance.[11] In *Cohen v. Kite Hill Community Association*,[12] the court concluded that because an association functions like an administrative agency, it must adhere to the same standards of due process as an administrative agency.[13] Despite the decision in *Cohen*, no cases have outlined what due process procedures are required of an association.[14]

Giving notice to one with an affected property interest is one of the primary due process considerations concerning administrative agencies.[15] It has been proposed that, for an association's architectural committee to provide a realistic opportunity to protect his or her interest, notice of regular meetings should be posted in a central location or mailed to owners as well as a list of the topics to be discussed.[16] Chapter 661, under the provisions of the Common Interest Development Open Meeting Act, imposes a similar requirement that an

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1994) (requiring between 10 and 60 days notice of any meeting to be hand-delivered or sent by first-class mail and that the notice include the time, place, and topics to be voted on at the meeting).

10. CAL. CIV. CODE § 1363.05(g) (enacted by Chapter 661); *see id.* § 1363.05(h) (enacted by Chapter 661) (authorizing an emergency meeting to be called by the president of the association or two other members of the governing body when a problem arises which is reasonably unforeseeable and must be addressed or acted upon immediately and proper notice is not practical).

11. Cohen v. Kite Hill Community Ass'n, 142 Cal. App. 3d 642, 651, 191 Cal. Rptr. 209, 214 (1983); *see* Wayne S. Hyatt & James B. Rhoads, *Concepts of Liability in the Development and Administration of Condominium and Home Owner Associations*, 12 WAKE FOREST L. REV. 915, 918 (1976) (proposing the concept of condominium and home owner associations as a quasi-government entity).

12. 142 Cal. App. 3d 642, 651, 191 Cal. Rptr. 209, 214 (1983).

13. *Cohen*, 142 Cal. App. 3d at 651, 191 Cal. Rptr. at 214; *see id.* (finding that an association has a fiduciary responsibility to its members and must meet requirements of due process, fair dealing, and equal protection much like a government organization); *see* Hyatt & Rhoads, *supra* note 11, at 943 (proposing that when an association is acting in a rulemaking capacity, association members should be provided an opportunity to review and comment upon the rule before its effective date).

14. Robert E. Merritt & Joseph K. Siino, *Architectural Control Committees and the Search for Due Process*, 15 REAL PROP. L. REP. 117, 121 (1992).

15. *Id.* at 122; *cf.* 5 U.S.C.A. § 553(b) (West 1977) (instructing federal agencies to publish general notice of proposed rule making in the Federal Register; however, where the names of those affected are known to the agency, there must be either personal service or actual notice provided to those parties); *id.* § 553(b)(1)-(3) (West 1977) (requiring that the notice include (1) the time, place, and nature of the rule making proceeding; (2) source of the authority for the proposed rule; and (3) the terms or substance of the proposed rule or a description of the subjects and issues under consideration); CAL. GOV'T CODE § 11346.4 (West Supp. 1995) (instructing California agencies to provide at least 45 days notice to the public before adopting, amending, or repealing any regulation).

16. Merritt & Siino, *supra* note 14, at 122.

association give its members two days prior notice, by mail or posting in a common area, before any meeting takes place.[17]

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Property; common interest development reserve fund use

Civil Code § 1368.4 (new); § 1365.5 (amended).
AB 463 (Goldsmith); 1995 STAT. Ch. 13

Existing law authorizes the board of directors of a common interest development[1] to temporarily transfer reserve funds[2] to the development's general operating account to satisfy short term cash flow requirements or other expenses.[3] It further provides that the board may impose a special assessment with owner approval to recover the full amount of the spent reserve funds.[4]

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17. CAL. CIV. CODE § 1363.05(g) (enacted by Chapter 661); *see* ASSEMBLY COMMITTEE ON HOUSING, COMMITTEE ANALYSIS OF AB 46, at 2 (Sept. 8, 1995) (citing the volume of complaints received by legislators and Assembly Housing Committee staff members from owners claiming that their boards of directors do not provide notice of meetings, or conduct meetings in private, as the impetus behind AB 46).

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1. *See* CAL. CIV. CODE § 1351(c) (West Supp. 1995) (defining a "common interest development" as including community apartment projects, condominium projects, planned developments, and stock cooperatives); *id.* § 1363(a) (West Supp. 1995) (prescribing that a common interest development will be managed by an association, whether incorporated or unincorporated, and delineating the association's general duties); *see also* Nahrstedt v. Lakeside Village Condo. Ass'n, Inc., 8 Cal. 4th 361, 370-77, 878 P.2d 1275, 1279-84, 33 Cal. Rptr. 2d 63, 67-72 (1994) (discussing the historical aspects of the common interest development and the necessity of a decrease in freedom in exchange for the benefits of shared ownership); Robert G. Natelson, *Consent, Coercion, and "Reasonableness" in Private Law: The Special Case of the Property Owners Association*, 51 OHIO ST. L.J. 41, 42-46 (1990) (examining the mediation, preservation, and community enhancement functions of the common interest development association). *See generally* Charles C. Marvel, Annotation, *Construction of Contractual or State Regulatory Provisions Respecting Formation, Composition, and Powers of Governing Body of Condominium Association*, 13 A.L.R. 4TH 598 (1982 & Supp. 1994) (analyzing state regulatory and private contractual provisions regarding the establishment, composition, and authorities of condominium association governing bodies).

2. *See* CAL. CIV. CODE § 1365.5(f) (amended by Chapter 13) (defining "reserve accounts" as the money which the board of directors for an association has earmarked for use in future needed repairs, replacements and additives); *id.* § 1365.5(g) (amended by Chapter 13) (defining "reserve account requirements" as funds set aside for repair, replacement, and restoration of areas the community association is obligated to maintain).

3. *Id.* § 1365.5(c)(2) (amended by Chapter 13); *see id.* (specifying the requirements a board must satisfy in order to divert funds).

4. *Id.* § 1365.5(c)(2) (amended by Chapter 13); *see id.* § 1366(b) (West Supp. 1995) (noting the owner approval requirement for special assessments which exceed 5% of budgeted gross expense of the association for that fiscal year); *see also* Timothy E. Travers, Annotation, *Expenses for Which Condominium Association May Assess Unit Owners*, 77 A.L.R. 3D 1290 (1994) (delineating the types of expenses for which condominium associations may assess condominium unit owners). *See generally* 4 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* § 471 (9th ed. 1987) (specifying that property owners' obligation to maintain easements is generally established by the property grant's language and the costs for any repairs are shared proportionately among each by use or by agreement of the owners).

However, prior law exempted special assessments imposed to recover construction defect litigation costs from the owner approval requirement.[5] Additionally, prior law stipulated that the community association must notify members of the decision to use reserve funds for construction defect litigation in the next available association newsletter.[6]

Chapter 13 eliminates the owner approval exemption for special assessments imposed for construction defect litigation costs, thereby mandating owner approval of all non-emergency special assessments.[7] In addition, it expands the community association's notification obligation to members by requiring advance written notice of proposed construction defect litigation.[8]

COMMENT

Chapter 13 limits a common interest development board's authority to involve the homeowner association members in potentially lengthy, costly, and

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5. 1994 Cal. Legis. Serv. ch. 885, sec. 1, at 3793-95 (amending CAL. CIV. CODE § 1365.5); *cf.* Farrington v. Casa Solana Condo. Ass'n, 517 So. 2d 70, 71 (Fla. Ct. App. 1987) (holding that condominium owner approval is not required for special assessments imposed to recover costs necessary for building repairs and litigation resulting from construction defects); *id.* at 72 (finding that a condominium corporation's board of directors had the authority to use its business judgement, as long as the board acted in a reasonable manner, in determining whether a special assessment was necessary); Washington Courte Condo. Ass'n v. Adreani, 523 N.E.2d 1248, 1249 (Ill. App. Ct. 1988) (upholding the lower court's ruling that maintenance of construction defect litigation is a "non-recurring common expense" appropriate for a special assessment).

6. 1994 Cal. Legis. Serv. ch. 885, sec. 1, at 3793-95 (amending CAL. CIV. CODE § 1365.5); *see* CAL. CORP. CODE § 5016 (West 1990) (specifying that a newsletter provides written notice when addressed and mailed or delivered to a member).

7. CAL. CIV. CODE § 1365(c)(2) (amended by Chapter 13); *see id.* § 1366(b)(1)-(4) (West Supp. 1995) (identifying the following as emergency situations: (1) a court required extraordinary expense; (2) an extraordinary expense necessary to repair or maintain any or all of the common interest development where a threat to personal safety is discovered and the association is responsible; (3) any repairs to the common interest development for which the community association is responsible and which could not have been reasonably foreseen when preparing the operating budget pursuant to California Civil Code § 1365; and (4) an extraordinary expense to pay the earthquake insurance surcharge required by California Insurance Code § 5003). *Compare* 1994 Cal. Legis. Serv. ch. 885, sec. 1, at 3793-95 (amending CAL. CIV. CODE § 1365.5) (establishing a condominium board's authority to impose special assessments for construction defect litigation without owner approval) *with* CAL. CIV. CODE § 1365.5(c)(2) (amended by Chapter 13) (specifying all special assessments imposed to recover spent reserve funds must be approved by the condominium owners pursuant to California Civil Code § 1366(b)).

8. CAL. CIV. CODE § 1368.4(a) (enacted by Chapter 13); *see id.* (listing the following as required elements of the notice: (1) a statement providing that a meeting will be held to discuss issues which may lead to civil action, (2) other options are available to address the issues, and (3) the meeting time and place); *see also* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1317, at 5 (Mar. 29, 1995) (asserting that prior notice of litigation allows owners the opportunity to determine alternative courses of action and developers the opportunity to make repairs); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 154, at 2 (June 14, 1994) (advocating pre-filing notice of litigation to owner members of common interest developments due to the substantial impact such litigation can have on the financial security of members' homes). *But see* CAL. CIV. CODE § 1368.4(b) (enacted by Chapter 13) (exempting the community association from the prior notice requirement if the association has reason to believe the applicable statute of limitations will expire before filing of the civil action, but requiring the association to give notice within 30 days of filing the action).

needless construction defect litigation without their consent.[9] Such undisclosed litigation is problematic for both current and future association members.[10] Opponents, nonetheless, argue that the law prior to Chapter 13 already addressed these concerns and better balanced the members' right to know against the board's freedom to act without restriction.[11]

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9. *See* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 463, at 2-4 (Mar. 29, 1995) (warning that construction defect litigation can lead to difficulty in selling condominium units, unknown financial and legal liability, more difficulty obtaining financing, and higher down payments); *see also* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1317, at 2 (Apr. 17, 1995) (asserting that failure to limit special assessments leads to diminished reserve funds and burdensome assessments which can cause serious financial and emotional damage to condominium owners); ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1317, at 3 (Mar. 29, 1995) (noting that proponents of nearly identical legislation believe it will limit frivolous lawsuits filed against condominium developers); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 154, at 2-3 (June 14, 1994) (stating that large cases may cost upwards of $100,000 to $500,000 which is charged to owner members via special assessments); *id.* (noting that developers may possibly be willing to settle or repair damages without litigation); *cf. Nahrstedt*, 8 Cal. 4th at 367-68, 878 P.2d at 1277-78, 33 Cal. Rptr 2d at 65-66 (reporting a case where the common interest development association appealed a lower court's decision, allowing an owner member to keep three cats against the development's regulations, to the California Supreme Court).

10. *See* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 463, at 4 (Mar. 29, 1995) (discussing the negative effects construction defect litigation can have on the condominium market and the potential danger of condominium purchasers buying into developments without knowledge of the litigation and the potential for limitless future assessments); *see also* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1317, at 2 (Apr. 17, 1995) (noting civil litigation's ruinous nature on individual condominium owners and the housing market); ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 1317, at 3 (Mar. 29, 1995) (noting that condominium owners should be informed about and allowed to consider litigation filed by the condominium association, since such litigation limits the owners' ability to sell or refinance the property and can affect the property's value); Marra v. Aetna Constr. Co., 15 Cal. 2d 375, 377-79, 101 P.2d 490, 492-93 (1940) (holding that benefits and burdens of property can pass to subsequent owners of such property). *But see* CAL. CIV. CODE § 1368(a)(4), (5) (West Supp. 1995) (requiring common interest development sellers to provide a written statement from an authorized community association representative regarding regular and special assessments and fees to purchasers).

11. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 463, at 3 (Mar. 29, 1995); *see also* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1317, at 2 (Apr. 17, 1995) (suggesting that the effect of nearly identical legislation is the destruction of a condominium board's duty and ability to make sound fiduciary decisions for the condominium owners as a whole and to compel developers to make necessary repairs); *id.* (noting that opponents believe California Civil Code § 1365.5 was sufficiently revised in 1994 and should not be revised again so soon); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 463, at 2 (June 14, 1994) (advocating post-filing notice as the best way to balance owner members' right to know against the community association board's legal and fiduciary responsibilities); Hidden Harbour Estates, Inc. v. Norman, 309 So. 2d 180, 181-82 (Fla. Ct. App. 1975) (emphasizing that individual condominium owners must necessarily give up certain freedoms enjoyed by separate, private property owners in exchange for the health, happiness, and peace of mind of the majority of other unit owners). *But cf.* Rogers & Ford Constr. Corp. v. Carlandia Corp., 626 So. 2d 1350, 1351 (Fla. 1993) (holding that community interest associations are not the only parties who can sue regarding construction defect litigation, and owner members are the real parties in interest and thereby may sue if they deem it necessary, although they should also remember the other members' interests). *See generally* Thomas G. Fischer, Annotation, *Standing to Bring Action Relating to Real Property of Condominium*, 74 A.L.R. 4TH 165 (1989 & Supp. 1994) (discussing individual condominium unit owners' standing to sue for damages to condominium common areas).

Property; covenants running with land

Civil Code § 1471 (new).
AB 1120 (Kuykendall); 1995 STAT. Ch. 188

Under existing law, covenants[1] contained in grants[2] of estates[3] in real property that are made for the direct benefit of the real property, pass with the grants so as to bind the assigns of the person who makes the covenant, and run with the land.[4]

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1. *See* BLACK'S LAW DICTIONARY 363 (6th ed. 1991) (defining "covenant" as an agreement, convention or promise of two or more parties, by deed in writing, signed, and delivered, by which either of the parties pledges himself or herself to the other that something is either done, or shall be done, or shall not be done, or stipulates that certain facts are true); *id.* (noting that the term is most commonly used with respect to promises in conveyances or other instruments relating to real estate).

2. *See* CAL. CIV. CODE § 1053 (West 1982) (specifying that a "grant" is a transfer in writing); *id.* § 1215 (West 1982) (indicating that the term conveyance embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to any real property may be affected, except wills).

3. *See* BLACK'S LAW DICTIONARY 547 (6th ed. 1991) (providing that an "estate" means the degree, quantity, nature, and extent which a person has in both real and personal property).

4. CAL. CIV. CODE § 1468 (West 1982); *see id.* (declaring that for covenants to run with the land the following requirements must be met: (1) The land of the covenantor which is to be affected by such covenants, and the land of the covenantee to be benefitted, are described in the instrument containing such covenants; (2) such successive owners of the land are in such instrument expressed to be bound thereby for the benefit of the land owned by, granted by, or granted to the covenantee; (3) each such act relates to the use, repair, maintenance, or improvement of, or payment of taxes and assessments on, such land or some part, or if the land owned by or granted to each consists of undivided interests in the same parcel or parcels, the suspensions of the right of partition or sale in lieu of partition for a period which is reasonable in relation to the purpose of the covenant; and (4) the instrument containing such covenants is recorded in the office of the recorder of each county in which such land is situated); *id.* (stating that where several persons are subject to the burden of any such covenant, it shall be apportioned among them according to California Civil Code § 1467, except that where only a portion of such land is so affected, such apportionment will be among the several owners of such portion); *see also id.* § 1467 (West 1982) (instructing that "where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity"); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1120, at 2 (June 27, 1995) (explaining that if a farmer sells the back of his farm to a buyer, and the buyer promises to abstain from developing the back in a manner which would be incompatible with the seller's farming practices on the front half of the property, the original buyer's promise would run with the land; the covenant will be binding on future owners of the back half of the farm because the promise benefits the land of the seller who retained ownership over the front half of the farm); *id.* (providing that private restrictions on the use of land which do not meet the requirements of covenants running with the land might be enforceable as "equitable servitudes," which are not required to meet the rigid tests for covenants running with the land against a person who took property with notice of the restriction); *cf.* MONT. CODE ANN. § 70-17-206 (1994) (maintaining that where several persons holding by several titles are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity); N.D. CENT. CODE § 47-04-30 (1993) (stating that where persons holding several titles are subject or entitled to the burden or the benefit, respectively, of a covenant running with the land, it must be apportioned among them according to the value of the property held by them individually, if such value is ascertainable, and if not, then according to their respective interests in point of quantity); S.D. CODIFIED LAWS ANN. § 43-12-6 (1995) (reflecting an identical provision to that of North Dakota).

Chapter 188 provides that, notwithstanding any other provision of law, a covenant made by an owner of land or by the grantee of land to do or refrain from doing some act on his or her own land for the benefit of the covenantee, regardless of whether or not it is for the benefit of land owned by the covenantee, runs with the land owned by or granted to the covenantor.[5]

Chapter 188 further provides that except as specifically provided by an enumerated statute or in the instrument creating the covenant,[6] the covenant will be binding upon each successive owner, during his or her ownership, of any portion of the land affected and upon each person having any interest derived through any owner, where certain requirements are met.[7]

COMMENT

Prior to the enactment of Chapter 188, landowners could have been faced with legal liabilities for environmental hazards that surfaced as a result of subsequent landowners' actions years after they had sold their property.[8]

As a result of the potential for environmental liability, the efficiency of the real estate market was hindered as buyers and sellers hesitated to enter new real

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5. CAL. CIV. CODE § 1471 (enacted by Chapter 188).

6. *See id.* (providing that the covenant may not run with the land to successive owners as specified in § 1466 of the California Civil Code); *see also id.* § 1466 (West 1982) (asserting that no one, merely by reason of having acquired an estate with an attached covenant running, is liable for a breach of the covenant at any time prior to acquisition of the estate, or after the person has parted with it or stopped enjoying its benefits).

7. *Id.* § 1471 (enacted by Chapter 188); *see id.* (enumerating the requirements that must be satisfied for the covenant to run with the land as the following: (1) the land of the covenantor to be affected with particularity is described with particularity in the instrument containing the covenant; (2) the successive owners of the land are expressed to be bound thereby for the covenantee's benefit in the instrument which contains the covenant; (3) each such act relates to the use of land and is reasonably necessary to protect the present or future health and safety of others, or the environment, as a result of, California hazardous materials being present on the land, as defined in California Health and Safety Code § 25260; and (4) the instrument containing the covenant is properly recorded in each county in which the land or some portion is situated and it includes in its title the words "Environmental Restriction"); *see also* CAL. HEALTH & SAFETY CODE § 25260(d) (West Supp. 1995) (specifying that "hazardous material" means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment).

8. *Analysis and Perspective*, TOXICS L. REP., Aug. 2, 1989, at 247; *see id.* (discussing the difficulty in escaping liability for environmental contamination on property that was sold many years ago); *see also* 42 U.S.C.A. §§ 9601-75 (West Supp. 1995) (setting forth the Comprehensive Environmental Response, and Liability Act (CERCLA), which imposes joint and several strict liability on past and present owners of property contaminated with hazardous substances); *id.* § 9607 (indicating that CERCLA provides a cause of action for the government and private persons to recover costs incurred in cleaning up contaminated property); Amland Properties Corp. v. Aluminum Co. of America, 711 F. Supp 784, 789 (D.C. N.J. 1990) (stating that the Federal Court imposed strict liability between successive owners for disposing of hazardous wastes during a manufacturing process). *See generally Analysis and Perspective*, *supra* at 247 (discussing the imposition of liability on sellers of real property and stating that CERCLA will encourage present property owners to test for environmental contamination because they will be able to recover some or all of the cleanup costs from predecessors in title, despite the existence of an exculpatory clause in their contracts).

estate transactions.[9] Some commentators have suggested private risk allocations,[10] whereby buyers and sellers negotiate and transfer exposure to potential liability.[11] However, private risk allocations bind only parties to the agreement; therefore, subsequent purchasers are not affected by the original risk allocation agreement.[12]

With the enactment of Chapter 188, private property covenants that restrict use in order to prevent exposure to hazardous substances will bind future owners even if they are not considered to be a benefit to either the covenantor's or the covanantee's property.[13] Chapter 188 may be looked upon as a radical detour from the traditional covenants doctrine because historically covenants will not run with the land unless there is benefit to the land owned by the covanantee.[14] Covenants will run with the land, but only if the land owned by the covenantee is benefitted; however, this is usually not the case with hazardous material related covenants because the covenantees do not typically retain plots of land adjacent or nearby the restricted land that they transfer to the covenantors.[15] The validity of Chapter 188 is based on the fact that it is consistent with several California Health and Safety Code provisions[16] which allow the Department of Toxic Substance Control to enter into agreements with a landowner to restrict the use of land to prevent exposure to hazardous waste.[17]

Those in support of Chapter 188 indicate that environmental deed restrictions will advise subsequent landowners about prior use of that property and enable them to avoid future uses that could give rise to legal liability.[18]

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9. Thaddeus Bereday, *Contractual Transfers of Liability Under CERCLA Section 107(E)(1): For Enforcement of Private Risk Allocations in Real Property Transactions*, 43 CASE W. RES. 161, 190-91 (1992); *see id.* at 196 (noting that besides penalizing those parties who cause pollution, CERCLA imposes costs on real estate transactions generally, regardless of who is actually to blame).

10. *See id.* at 167 (stating that private risk allocations impose obligations on the parties who negotiate the agreement).

11. *Id.* at 197.

12. *Id.* at 212.

13. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1120, at 3 (June 27, 1995).

14. *Id.* at 4.

15. *Id.*

16. *See* CAL. HEALTH & SAFETY CODE § 25202.5 (West 1992) (declaring that the Department of Toxics may enforce covenants on any hazardous waste facility that is permitted under the California Health and Safety Code); *id.* § 25230 (West 1992) (enabling the Department of Toxic Substances Control to enter into agreements with landowners of hazardous waste properties or border zone properties to restrict the use of the land to prevent exposure to hazardous waste or hazardous substances); *see also id.* § 25229(a) (West 1992) (specifying that hazardous waste property or border zone property are designated by the director); *id.* § 25355.5(a) (West 1992) (stating that the covenants may be enforced on any properties that are on the state Superfund list); *id.* § 25398.7(a) (West Supp. 1995) (indicating that a remedial action plan may utilize land use controls to limit or restrict land use where appropriate).

17. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1120, at 3 (June 27, 1995).

18. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1120, at 2 (July 6, 1995); *see id.* (stating that putting use restrictions in a covenant which runs with the land will bind successor owners, thus putting them on notice to avoid future inappropriate uses); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1120, at 4 (June 27, 1995) (indicating that toxic cleanups are typically unsuccessful at removing all contaminants even when conducted in accordance with the strictest possible standards and as a result certain uses of property, like day care centers, will never be appropriate); *id.* (noting that agencies and property owners sometimes allow property to be cleaned up in a manner which would make it inappropriate for types of uses

In addition, environmental deed restrictions will enable landowners to place properties on the market with greater assurance that the use will not be changed in the future to a use that can trigger future liability.[19]

While there are no opponents to Chapter 188, the California Land Title Association (CLTA) has expressed concern because of the impact of placing new restrictions on title which title insurers might not identify.[20] However, the CLTA is convinced that Chapter 188 will not increase the risks assumed by title insurance companies because of the requirement that instruments that create covenants contain the language, "Environmental Restrictions."[21]

Tad A. Devlin

Property; housing—mobilehomes

Civil Code § 1797.2 (amended); Health and Safety Code § 50082.5 (repealed); §§ 18008, 18008.7,[1] 18015.7 (new); §§ 18062.8, 18076 (amended).
AB 431 (Hauser); 1995 STAT. Ch. 185

Prior law, known as the Mobilehomes-Manufactured Housing Act of 1980, defined "mobilehome" as a structure transportable in multiple sections, not containing more than two dwelling units[2] used with or without a foundation system, or a structure transportable in multiple sections used with a foundation

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other than the type which was planned for in developing the cleanup plan); Telephone Interview with Brett McFadden, Legislative Aid to Assemblymember Steve Kuykendall (Aug. 8, 1995) (notes on file with the *Pacific Law Journal*) (indicating that future uses that could be inappropriate and give rise to liability include, but are not limited to, gas stations and dry cleaners). *See generally* Letter from Gary A. Patton, General Counsel, *The Planning and Conservation League*, to Assemblymember Steve Kuykendall (May 1, 1995) (copy on file with the *Pacific Law Journal*) (supporting AB 1120 because it might assist in ensuring proper cleanup of contaminated properties).

19. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1120, at 2 (July 6, 1995).

20. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1120, at 4 (June 27, 1995).

21. *Id.*

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1. CAL. HEALTH & SAFETY CODE § 18008.7 was formerly CAL. HEALTH & SAFETY CODE § 18008, but has been renumbered as § 18008.7 pursuant to Chapter 185.

2. *See* CAL. HEALTH & SAFETY CODE § 18003.3 (West 1984) (defining "dwelling unit" as one or more habitable rooms to be occupied by one family containing facilities for sleeping, cooking, and sanitation); *cf.* ALA. CODE § 34-14A-2(6) (Supp. 1994) (defining "dwelling" as providing complete and independent residential living for one or more persons); R.I. GEN. LAWS § 5-65-1(2) (Supp. 1994) (describing a "dwelling unit" as a complete and independent living facility for one or more persons).

system, and used as an efficiency unit,[3] dormitory,[4] residential hotel,[5] or a dwelling unit.[6] Prior law also required that mobilehome units meet specific handicap accessibility requirements,[7] and specified that recreational vehicles,[8] commercial coaches,[9] and factory-built housing[10] were not mobilehomes.[11]

Chapter 185 defines "mobilehome" as a structure meeting a manufactured home's[12] requirements.[13] Chapter 185 also creates the term "multi-unit

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3. *See* CAL. HEALTH & SAFETY CODE § 17958.1 (West Supp. 1995) (defining "efficiency unit" as a unit being occupied by two or fewer persons which has at least 150 square feet of area and which may have a partial kitchen or bathroom).

4. *See id.* § 18008.7(d)(1) (amended by Chapter 185) (defining "dormitory" as a room or rooms for temporary residence by two or more persons); *see also* CAL. EDUC. CODE § 94110 (West 1989) (defining "dormitory" as a housing unit with the needed and typical attendant and related facilities and equipment).

5. *See* CAL. HEALTH & SAFETY CODE § 50519(b)(1) (West Supp. Pamphlet 1995) (defining "residential hotel" as a building containing six or more rooms intended to be used for sleeping purposes, which is the primary residence of those guests sleeping there); *id.* (stating that a "residential hotel" is *not* a building which contains six or more rooms or efficiency units which is used by transient guests).

6. 1989 Cal. Stat. ch. 875, sec. 1, at 2869-70 (amending CAL. HEALTH & SAFETY CODE § 18008); *cf.* ALA. CODE § 24-5-2(1) (Supp. 1994) (defining "mobile home" as a structure, transportable in one or more sections, that is 8 feet or more by 32 feet or more when erected, built on a permanent chassis, and designed as a dwelling, with or without a permanent foundation, when connected to the required utilities); IOWA CODE ANN. § 435.1(3) (West Supp. 1995) (defining "mobile home" as any vehicle without self propulsion or manufactured as to allow it to be moved on public roadways, constructed to be used for habitation, and any such vehicle not registered as a motor vehicle); KAN. STAT. ANN. § 58-4202(b)(1) (1994) (defining "mobile home" as a structure transportable in one or more sections, where each section is eight feet by 36 feet, and on a permanent chassis and designed as a dwelling, with or without a foundation, when connected to specified utilities); *id.* § 58-4202(b)(2) (declaring that the definition of "mobile home" is not to include a structure subject to federal manufactured home construction and safety standards); KY. REV. STAT. ANN. § 227.550(9) (Baldwin 1988) (defining "mobile home" and "manufactured home" as a structure, transportable in one or more sections); *id.* (indicating that a mobile home or a manufactured home may be used as a residence, business, profession, or trade); LA. REV. STAT. ANN. § 51:911.22(6) (West 1987) (defining "mobile home" as a structure, transportable in one or more sections that is built on a permanent chassis and designed as a dwelling, with or without a permanent foundation, when connected to utilities).

7. *See* 1989 Cal. Stat. ch. 875, sec. 1, at 2869-70 (amending CAL. HEALTH & SAFETY CODE § 18008) (requiring that construction be in compliance with handicap accessibility).

8. *See* CAL. HEALTH & SAFETY CODE § 18010(a), (b) (West Supp. 1995) (defining a "recreational vehicle" as including a motor home, travel trailer, truck camper, or camping trailer, with or without moving power, manufactured for human residency); *cf.* KAN. STAT. ANN. § 75-1212(f) (1989) (defining "recreational vehicle" as a vehicular-type unit on or for use on a chassis and designed primarily as living quarters for recreational, camping, vacation or travel); KY. REV. STAT. ANN. § 227.550(14) (Baldwin 1988) (defining "recreational vehicle" as a vehicular type unit designed as temporary living quarters for recreational, camping, or travel use); NEB. REV. STAT. § 71-4603(2) (1990) (defining "recreational vehicle" as a vehicular type unit designed as a temporary living quarters for recreational, camping, or travel use).

9. *See* CAL. HEALTH & SAFETY CODE § 18001.8 (West 1984) (defining "commercial coach" as a structure transportable in one or more sections, manufactured for human occupancy for industrial, professional, or commercial objectives).

10. *See id.* § 19971 (West 1992) (defining "factory-built housing" as a structure, room, or combination of rooms, or building component manufactured so that all concealed parts or processes cannot be inspected before installation at the building site without disassembling or destroying the part); *id.* (stating that factory-built housing does not include mobilehomes, recreational vehicles, or a commercial coaches).

11. 1989 Cal. Stat. ch. 875, sec. 1, at 2869-70 (amending CAL. HEALTH & SAFETY CODE § 18008).

12. *See* CAL. HEALTH & SAFETY CODE § 18007 (West 1984) (defining "manufactured home" as a structure, transportable in one or more sections, and built on a permanent chassis for use as a dwelling, with or without a permanent foundation, when connected to required utilities); *cf.* 42 U.S.C.A. § 5402(6) (West 1995) (defining "manufactured home" as a structure, transportable in one or more sections, which is 8 feet or more by 40 feet or more when in traveling mode, or is 320 square feet or more when erected on site, which is

manufactured housing" and defines it as a structure transportable in one or more sections containing less than two dwelling units, a dormitory, or an efficiency unit, and used with a support or foundation system.[14] Multi-unit manufactured housing can also be defined as a structure transportable in more than one section used with a foundation system and used as three or more dwelling units, or a residential hotel.[15] Furthermore, Chapter 185 requires that construction of multi-unit manufactured housing comply with the Department of Housing and Community Development's regulations, and requires that specified handicap accessibility standards be met.[16] Chapter 185 further requires that all provisions of law regarding manufactured homes apply to multi-unit manufactured housing, except as specified.[17]

Existing law prohibits any manufacturer[18] or distributor [19]from selling manufactured homes, mobilehomes, or commercial coaches to persons not licensed to resell them, excluding Indian tribes or authorized general building contractors.[20]

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built on a permanent chassis and designed as a dwelling with or without a permanent foundation when connected to utilities); IOWA CODE ANN. §§ 335.30, 414.28 (West Supp. 1995) (defining "manufactured home" as a factory-built structure, which is manufactured under 42 U.S.C. § 5403 and is used as a place for human habitation, but which is not equipped with a permanent hitch or other device for moving the structure to a permanent site, and which does not have wheels or axles permanently attached to the body or frame of the structure); MINN. STAT. ANN. § 327.31(6) (West Supp. 1995) (defining "manufactured home" as a structure, transportable in one or more sections in traveling mode, is 8 feet or more by 40 feet or more, or is 320 square feet or more when erected on site, and is built on a permanent chassis and designed as a dwelling with or without a permanent foundation when connected to utilities); NEB. REV. STAT. § 71-4603(1) (1990) (defining "manufactured home" as a structure, transportable in one or more sections in traveling mode, is 8 feet or more by 40 feet or more, or is 320 square feet or more when erected on site, and is built on a permanent chassis and designed as a dwelling with or without a permanent foundation when connected to utilities); N.M. STAT. ANN. § 60-14-2(M) (Michie Supp. 1989) (defining "manufactured home" as a movable or portable structure over 32 feet in length or 8 feet in width constructed for being towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence).

13. CAL. HEALTH & SAFETY CODE § 18008 (enacted by Chapter 185).

14. *Id.* § 18008.7(b) (amended by Chapter 185).

15. *Id.*

16. *Id.*; *see also id.* § 50406 (West Supp. Pamphlet 1995) (describing the duties of the Department of Housing and Community Development).

17. *Id.* § 18008.7(c) (amended by Chapter 185).

18. *See id.* § 18006.3 (West Supp. 1995) (defining "manufacturer" as any person who produces from raw materials or basic components or who alters permanently for sale, rent, or lease manufactured homes, mobilehomes, or commercial coaches).

19. *See id.* § 18003 (West 1984) (defining "distributor" as those other than manufacturers who are engaged in selling or distributing new manufactured homes, mobilehomes, or commercial coaches).

20. CAL. HEALTH & SAFETY CODE § 18062.8 (amended by Chapter 185); *see id.* § 18062.9 (West Supp. 1995) (permitting a manufacturer of manufactured homes to be a licensed California general building contractor if the sale is for five or more manufactured homes in a calendar year, the home is delivered directly and installed, and the homes are installed within a single subdivision); 25 C.F.R. § 140.1 (1995) (providing that the Commissioner of Indian Affairs has the sole power to appoint traders with any Indian Tribe, and that the trader must conform to the rules and regulations regarding that trade as set forth by the Commissioner); *see also* CAL. BUS. & PROF. CODE § 7057 (West 1995) (defining "general contractor" as a contractor whose principal business is connected with the building of a structure used for humans, animals, or property requiring in its construction the use of more than two unrelated building trades or crafts).

Chapter 185 authorizes a public agency to purchase directly from the manufacturer a manufactured home, mobilehome, or commercial coach for the purpose of acquiring low and moderate income housing.[21]

Prior law, known as the Zenovich-Moscone-Chacon Housing and Home Finance Act, defined "manufactured housing" as including mobilehome and factory-built housing.[22] Chapter 185 repeals this definition.[23]

Existing law requires all new mobilehomes and manufactured homes sold to be covered by a warranty.[24] Chapter 185 requires a manufacturer to provide this warranty when the manufacturer sells a mobilehome or manufactured home directly to a city, county, or other public agency, for the purpose of housing for low or moderate income households.[25] Chapter 185 requires registration of any manufactured home, mobilehome, or commercial coach purchased by a city, county, or other public agency, for the purpose of housing low and moderate income households.[26]

COMMENT

Chapter 185 was enacted to clarify prior state law regarding the technical definition of mobilehome that was created when the federal government replaced the term "mobilehome" with the term "manufactured home."[27] In addition,

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21. CAL. HEALTH & SAFETY CODE § 18015.7 (enacted by Chapter 185); *see id.* § 50093 (West Supp. Pamphlet 1995) (defining "persons and families of low or moderate income" as those persons or families whose income does not exceed 120% of area median income, adjusted for family size); *id.* (allowing for the income to exceed 120% if in a particular geographic area the number is too low to qualify a substantial number of persons or families); *see also id.* § 50093(a) (West Supp. Pamphlet 1995) (defining "persons and families of low income" or "persons of low income" as those who are eligible for financial assistance for the benefit of occupants of housing); *id.* § 50093(c) (West Supp. Pamphlet 1995) (defining "area median income" as the median family income of a geographic area of the state, as determined annually by the United States Department of Housing and Urban Development).

22. 1980 Cal. Stat. ch. 1136, sec. 4, at 3666 (enacting CAL. HEALTH & SAFETY CODE § 50082.5).

23. 1995 Cal. Legis. Serv. ch. 185, sec. 7, at 559 (repealing CAL. HEALTH & SAFETY CODE § 50082.5).

24. CAL. CIV. CODE § 1797.2(a) (amended by Chapter 185); *see id.* (mandating that the warranty of a mobilehome or manufactured home cover utility, fire safety, and structural systems, and all appliances as installed or manufactured by the contractor, dealer, or manufacturer).

25. *Id.* § 1797.2(b) (amended by Chapter 185)

26. CAL. HEALTH & SAFETY CODE § 18076(b) (amended by Chapter 185); *see id.* § 18085(a), (b) (West Supp. 1995) (providing the application and procedure for registering a mobilehome and a manufactured home); *see also id.* § 18114(a), (b) (West Supp. 1995) (setting forth that an $11 fee is due at the time of original registration or renewal for each transportable section of manufactured home, mobilehome, or commercial coach).

27. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 431, at 2 (May 15, 1995); *see* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 431, at 3 (Apr. 5, 1995) (describing how the federal government recognized that these homes were seldom mobile and usually remained where the home was originally installed, and that technological changes of manufactured homes warranted a separation from the negative connotation of the term "mobilehome"); Housing and Community Development Act of 1980, Pub. L. No. 96-399, § 308, 94 Stat. 1614, 1640-41 (1981) (stating that under federal law the term "mobile home" will be substituted by the term "manufactured home" in all relevant sections of the National Housing Act, the United States Housing Act of 1937, and the Housing and Community Development Act of 1974); *see also* James M. Brown & Molly A.

Chapter 185 attempts to clarify the technical definitions by creating a new term, "multi-unit manufactured housing," to apply to a duplex, triplex, dormitory, residential hotel, or efficiency unit when created by manufactured housing.[28]

Since prior law required dormitories and efficiency units to be placed on permanent foundations, the Legislature enacted Chapter 185 to provide additional flexibility by allowing these types of manufactured homes to be built on a mobilehome support system.[29]

Finally, Chapter 185 encourages public agencies to take advantage of the lower factory direct prices.[30] Thus, Chapter 185 enables agencies to extend

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Sellman, *Manufactured Housing: The Invalidity of the "Mobility" Standard*, 19 URB. LAW. 367, 370, 371-74 (1987) (discussing the stereotypes associated with the term "mobile home" and how these homes are no longer mobile except when being transported to the original site, and how the federal government has redefined these homes as "manufactured homes" in order to acknowledge the advancement in technology and innovation and recognize the home's permanent nature); Phyllis B. Librach, *Ready-Made: "Manufactured" Housing on the Rise*, ST. LOUIS POST-DISPATCH, Jan. 22, 1990, at 1 (stating that manufactured homes are built from almost the same material as that used by on-site builders, and that manufactured homes come with many amenities like marble bath tubs, whirlpools, chandeliers, and many household appliances). *But see* William Claiborne, *Hurricane Revives Debate over Mobile Home Safety*, WASH. POST, Sept. 9, 1992, at A1 (quoting the chief arbiter of Dade County's building codes, who said that mobile homes are not safe, and that too many conventional homes that withstood Hurricane Andrew were damaged by flying debris from mobile homes); David A. Jones & Brad German, *Blow-out; Southern Florida Housing Damage Caused by Hurricane Andrew*, BUILDER, Feb. 1993, at 276 (noting that 97% of manufactured homes were destroyed by Hurricane Andrew, but only 10% of other single family homes were destroyed); *id.* (illustrating that two-thirds of the homes destroyed were manufactured homes); Robert A. Olson & Richard S. Olson, *A Report Card on the "Infrastructure Quake,"* SACRAMENTO BEE, Jan. 30, 1994, at F3 (commenting that mobile homes were too flimsy compared to conventional homes to withstand the Northridge earthquake, and that it could be fixed by more effective bracing).

28. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 431, at 2 (May 15, 1995); *see* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 431, at 3 (Apr. 5, 1995) (explaining that, under federal law, the term "manufactured housing" only applied to single-family homes while under existing California law the term "mobilehome" applies to duplex, triplex, dormitory, residential hotel, or efficiency unit); *id.* at 2-3 (asserting that by aligning the definition of mobilehome with the federal definition of manufactured home and creating a new definition of "multi-unit manufactured home," the confusion and distinction between existing state law and federal law will be eliminated).

29. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 431, at 2 (May 15, 1995); *see* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 431, at 2 (Apr. 5, 1995) (stating that AB 431 will allow manufactured housing that are designed as dormitories or efficiency units to be used for crisis housing such as homeless, farm workers, or disaster victims without installing a permanent foundation system); *see also* Grace Sandberg, *What About Trailer Parks?*, NEWSDAY, May 25, 1995, at 34 (discussing that the city of New York could house some of the homeless in manufactured housing on vacant lots throughout the city); *id.* (asserting that housing the homeless in manufactured housing or mobile homes would be cheaper and easier for the government, and provide homeless families with safer housing in a more community oriented atmosphere); Judith VandeWater, *"A Place"; FEMA Mobile Homes Fill Need for Victims*, ST. LOUIS POST-DISPATCH, Sept. 24, 1993, at 1 (discussing how the Federal Emergency Management Agency is providing mobile homes as temporary residence for flood victims of the Midwest until the victims find another permanent residence).

30. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 431, at 2 (June 22, 1995).

limited resources and to produce more affordable housing.[31]

Chad D. Bernard

Property; Housing and Land Use Omnibus Act of 1995

Government Code §§ 65036.5, 65040.7 (repealed); §§ 51231, 51287, 65040, 65040.2, 65861, 66016, 66031 (amended); Health and Safety Code §§ 33216, 50459 (amended).
SB 660 (Campbell); 1995 STAT. Ch. 686
(Effective October 9, 1995)

Existing law authorizes a county or city to engage in the preservation of agricultural land by contracting with the landowner for that purpose.[1] Existing law further specifies that the city or county can charge a fee to cover the reasonable expenses in the event of a cancellation of such a contract.[2] Chapter 686 clarifies that such fee is imposed pursuant to sections 66016 through 66018.5 of the California Government Code.[3]

Under prior law, the Office of Planning and Research was required to conduct surveys of cities and counties and study the social and economic profiles of certain counties.[4] Chapter 686 eliminates the obsolete and outdated requirements for the Office.[5]

Existing law provides that in the absence of a city planning commission, the legislative body of a city may regulate zoning ordinances in that city.[6] Chapter 686 expands existing law and allows a county board of supervisors to undertake

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31. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 431, at 2 (May 15, 1995); *see* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 431, at 2 (Apr. 5, 1995) (stating that public agencies can now stretch federal block grants, redevelopment, and other housing funds to provide more housing because of the cheaper cost that the local agency can purchase from the manufacturers rather than dealers).

1. CAL. GOV'T CODE § 51231 (amended by Chapter 686); *see id.* (providing that a city or county must adopt certain rules for the preservation of agricultural lands, including the authorization to enlarge or reduce the size of an existing agricultural preserve).

2. *Id.* § 51287 (amended by Chapter 686); *see id.* (providing that the city or county may establish a fee for a cancellation of the contract, but it is not to exceed the actual costs incurred).

3. *Id.; see* 1995 Cal. Legis. Serv. ch. 686, sec. 1, at 4111 (stating that Chapter 686 is to be known as the Housing and Land Use Omnibus Act of 1995).

4. 1984 Cal. Stat. ch. 964, sec. 2, at 3351 (enacting CAL. GOV'T CODE § 65036.5); *see id.* (noting that a sample survey of cities and counties throughout California was to be conducted by the Office of Planning and Research which was to report to the Legislature on or before Dec. 31, 1985); 1976 Cal. Stat. ch. 1382, sec. 2, at 6277 (enacting CAL. GOV'T CODE § 65040.7) (providing that the Office of Planning and Research was required to conduct a study of the social and economic profile of three selected counties by January 1, 1979).

5. 1995 Cal. Legis. Serv. ch. 686, sec 3, 4, at 4113-17 (repealing CAL. GOV'T CODE §§ 65036.5, 65040.7).

6. CAL. GOV'T CODE § 65861 (amended by Chapter 686).

zoning duties when there is no county planning commission.[7]

Under existing law, a court can encourage litigants involved in land use or environmental lawsuits to use a mediator to resolve their dispute.[8] Chapter 686 expands existing law by adding zoning decisions to the list of areas eligible for mediation.[9]

Furthermore, existing law grants the State Department of Housing and Community Development the authority to revise its guidelines to satisfy the federal requirements in order to receive federal funds.[10] Chapter 686 restores the Department's authority to prepare the guidelines that satisfy the federal requirements due to another bill inadvertently chaptering out that change.[11]

Existing law states that if an area of land is subsequently annexed to a city or is included in a new city, that area may be transferred from the county to the city.[12] Chapter 686 expands existing law by allowing a county to transfer all or a portion of the non-contiguous territory to a city when that city annexes an already existing county redevelopment project.[13]

COMMENT

Each year, planners and builders that are affected by state housing and land use statutes discover problems with these statutes.[14] However, many of these problems are minimal and do not warrant passing separate bills on each of these problems.[15] As such, the Legislature is uniting several of these small provisions into a single enactment in Chapter 686.[16]

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7. *Id.*

8. *Id.* § 66031(b) (amended by Chapter 686); *see id.* § 66031(a) (amended by Chapter 686) (stating that the court can invite mediation for certain types of land use or environmental disputes including, among others, development projects, California Environmental Quality Act decisions, time limits, developer fees, and general and specific plans); *cf.* PA. STAT. ANN. tit. 53, § 10908.1(a), (b) (1995) (specifying that mediation concerning a dispute before a zoning hearing board may be encouraged, but not mandated, and that the mediator must have a working knowledge of zoning and subdivision procedures).

9. CAL. GOV'T CODE § 66031(a)(9) (amended by Chapter 686).

10. CAL. HEALTH & SAFETY CODE § 50459 (amended by Chapter 686); *see id.* (providing that the State Department of Housing and Community Development may revise its guidelines in the preparation of the requirements for the Consolidated Submissions for the Community Planning and Development Programs).

11. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 660, at 3 (May 11, 1995).

12. CAL. HEALTH & SAFETY CODE § 33216 (amended by Chapter 686); *see id.* (providing that the county and city can mutually agree to transfer a project area that is subsequently annexed by a city from the county to the city); *id.* (stating that the county can also transfer a redevelopment area of non-contiguous land to the city)

13. *Id.* § 33216 (amended by Chapter 686).

14. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 660, at 1 (May 11, 1995).

15. *Id.* at 1.

16. *Id.* at 1, 3; *see* Peter Rowe, *By Golly, They Earned it for a Job Well Done*, SAN DIEGO UNION-TRIB., May 12, 1994, at E1 (reporting that the Legislature approved a 37% raise for themselves even when the state budget had a $5 billion deficit and the state unemployment rate was at over 9.5%); *see also* Jerry Gillam, *Sacramento File: Senate's Limit on Bills Cuts Volume By 29%—To 2,064*, L.A.TIMES, Apr. 4, 1992, at B8 (observing that the Legislature enacted a resolution that limited the number of bills each senator could introduce and this saved the taxpayers millions of dollars by reducing the volume of bills by 29%); *Sacramento*

Chapter 686 is intended to extend the duties and privileges to Kern County and other cities that lack a planning commission by allowing the city council or county board of supervisors to carry out planning duties.[17] Additionally, since zoning controversies have been occurring with increasing frequency, the Legislature is extending zoning to the list of areas eligible for mediation.[18]

There are no known opponents to Chapter 686.[19] However, an argument could be made that it violates the single subject rule expressed in *Harbor v. Deukmejian*.[20] Through Justice Mosk's majority opinion, the court held that the provisions in a legislative bill must have a reasonable relationship to one another in order to satisfy the single subject requirement.[21] The two questions to be decided include whether the provisions of a measure are functionally related, and whether the provisions of a measure reasonably germane to one another.[22]

Proponents of Chapter 686 argue that, even if it does violate a strict interpretation of *Harbor*, the statute should be rendered valid because it will save California taxpayers approximately $68,500.[23] Additionally, since there is a public review of every item in Chapter 686, critics cannot argue about the Legislature having a hidden agenda.[24]

Gregory T. Flahive

Watch; Nice Save, L.A. TIMES, May 5, 1993, at B6 (noting that the Legislature increased the scope and budget of the auditor general's office, an agency which monitors government waste and spending, because the agency was credited with saving taxpayers $500 million in the last decade alone, during tight-budget times); Daniel M. Weintraub, *Consumer Affairs is Target of Budget Ax*, L.A.TIMES, June 7, 1992, at A3 (reporting that the state of California faced a shortfall of $11 billion for the fiscal year of 1992 and the Legislature concluded that the Department of Consumer Affairs should be eliminated after a thorough examination of every government function).

17. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 660, at 2 (May 11, 1995).

18. *Id.* at 2-3.

19. SENATE HOUSING AND LAND USE COMMITTEE, COMMITTEE ANALYSIS OF SB 660, at 3 (Apr. 17, 1995); *see id.* (commenting that opposition to SB 660 is unknown).

20. *Id.* at 1; *see* Harbor v. Deukmejian, 43 Cal. 3d 1078, 1096, 742 P.2d 1290, 1300, 240 Cal. Rptr. 569, 579 (1987) (holding that a bill will not be valid if it joins disparate and unrelated provisions because of the prejudice that could occur to the public if certain provisions were hidden among other non-related enactments).

21. *Harbor*, 43 Cal. 3d at 1100, 742 P.2d at 1303, 240 Cal. Rptr. at 582; *see* Chemical Specialities Manufacturers Ass'n, Inc. v. Deukmejian, 227 Cal. App. 3d. 663, 667, 278 Cal. Rptr. 128, 130-31 (1991) (holding that when several provisions are combined in a single legislative bill, all the provisions must be related to each other).

22. *Harbor*, 43 Cal. 3d. at 1100, 742 P.2d at 1303, 240 Cal. Rptr. at 582; *see* League of Women Voters v. Eu, 7 Cal. App. 4th 649, 659, 9 Cal. Rptr. 2d 416, 422 (1992) (upholding the decision in *Harbor* that the provisions in a measure must be functionally related).

23. SENATE HOUSING AND LAND USE COMMITTEE, COMMITTEE ANALYSIS OF SB 660, at 3 (Apr. 17, 1995).

24. *Id* at 4.

Property; redevelopment—Community Redevelopment Disaster Project Law

Health and Safety Code §§ 34000, 34001, 34002, 34003, 34004, 34005, 34006, 34007, 34008, 34009 (repealed and new); §§ 34010, 34011, 34012, 34013, 34014 (repealed).
AB 189 (Hauser); 1995 STAT. Ch. 186

Existing law, known as the Community Redevelopment Law,[1] authorizes the establishment of redevelopment agencies[2] in communities[3] to address the effects of blight[4] in those communities.[5]

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1. *See* CAL. HEALTH & SAFETY CODE §§ 33000-33855 (West 1973 & Supp. 1995) (setting forth the Community Redevelopment Law).

2. *See id.* § 34002(a)(4) (enacted by Chapter 186) (defining "redevelopment agency" as any agency provided for and authorized to function under the Community Redevelopment Law); *see also id.* § 33020(a) (West Supp. 1995) (defining "redevelopment" as "the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare"); *id.* § 33021 (West 1973) (setting forth the types of projects included in redevelopment); *id.* § 33022 (West 1973) (stating that redevelopment does not exclude the continuance of existing buildings or uses whose demolition and rebuilding or change of use are not determined to be essential to the area's redevelopment and rehabilitation).

3. *See id.* § 33002 (West 1973) (defining "community" as "a city, county, city and county, or Indian tribe, band, or group which is incorporated or which otherwise exercises some local governmental powers").

4. *See id.* § 33031(a) (West Supp. 1995) (listing the physical conditions that cause blight as follows: (1) those buildings that are unsafe or unhealthy to live or work, (2) factors that substantially hinder or prevent the economically viable use or capacity of buildings or lots, (3) incompatable adjacent or nearby uses which prevent the economic development of those parcels or other portions of the project area, and (4) subdivided lots irregularly formed and inadequately sized for proper usefulness and development that are in multiple ownership); *id.* § 33031(b) (West Supp. 1995) (listing economic conditions that produce blight as follows: (1) depreciated or stagnant property values or impaired investments, including, but not necessarily limited to, those properties with hazardous wastes that require agency authority; (2) abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an urban use area served by utilities; (3) a lack of commercial facilities that are necessary and normally found in neighborhoods, such as grocery stores, drug stores, banks, etc.; (4) residential overcrowding, or an excess of bars, liquor stores, or other businesses catering mainly to adults, that has led to general public safety and welfare problems; and (5) a crime rate so high that it poses a serious threat to public safety). *See generally* Jonathan M. Purver, Annotation, *What Constitutes "Blighted Area" Within Urban Renewal and Redevelopment Statutes*, 45 A.L.R. 3D 1096 (1972) (discussing cases dealing with the question as to what constitutes a "blighted area" within the meaning of urban renewal and redevelopment legislation).

5. CAL. HEALTH & SAFETY CODE § 33030 (West Supp. 1995); *see* Redevelopment Agency of San Francisco v. Hayes, 122 Cal. App. 2d 777, 806, 266 P.2d 105, 123-24 (1954) (holding that the Redevelopment Acts do not violate the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution; furthermore, article I, § 13 of the California Constitution is not violated either, because it is identical in scope to the Fourteenth Amendment of the U.S. Constitution), *cert. denied sub nom.*, Van Hoff v. Redevelopment Agency of San Francisco, 348 U.S. 897 (1954); *id.* at 806, 266 P.2d at 124 (emphasizing that Congress, along with other states, has enacted legislation for the necessity of redeveloping blighted areas by the use of private as well as public means); *see also* U.S. CONST. amend. XIV, § 1 (prohibiting any state from making or enforcing any law which abridges the privileges or immunities of citizens of the United States, and further prohibiting any state from depriving any person of life, liberty, or property, without due process of law); CAL. CONST. art. I, § 13 (stating that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures may not be violated); *cf.* ALASKA STAT. § 18.55.530(d) (1994) (allowing a corporation to prepare or have prepared a redevelopment plan, or any person or agency, public or

Prior law, known as the Community Redevelopment Financial Assistance and Disaster Project Law, among other things, authorized a redevelopment agency, within its area of operation, to plan, undertake, and carry out a redevelopment or urban renewal plan in a disaster area without regard to specified requirements of the Community Redevelopment Law.[6]

Chapter 186 repeals the Community Redevelopment Financial Assistance and Disaster Project Law, and instead enacts the Community Redevelopment Disaster Project Law.[7] Chapter 186 specifies that any redevelopment agency or project area established pursuant to the Community Redevelopment Financial Assistance and Disaster Project Law, as that law existed prior to Chapter 186, will remain in existence and subject to that law as if the Legislature had not repealed that law.[8] Furthermore, in the absence of a specific provision to the contrary, a community must still comply with the Community Redevelopment Law.[9]

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private, to submit a redevelopment plan to the corporation); ARK. CODE ANN. § 14-169-703(a)(1) (Michie 1987) (authorizing a housing authority to plan and undertake urban renewal projects); COLO. REV. STAT. § 31-25-108 (1986) (declaring that when the governing body certifies that an area within the municipality is in need of redevelopment or rehabilitation due to flood, fire, hurricane, earthquake, or other catastrophe which the governor has declared the need for disaster federal assistance such area must be deemed blighted, and the authority within that municipality may submit to such governing body a proposed urban renewal plan and project for the area); HAW. REV. STAT. § 53-7 (Supp. 1992) (authorizing the council of a county, when the council establishes that an area within the county is in need of renewal, redevelopment, or rehabilitation as a result of a seismic wave, flood, fire, hurricane, earthquake, storm, volcanic activity, explosion, or other like catastrophe, natural or man-made origin, to approve an urban renewal plan and project for the area); IDAHO CODE § 50-2008(a) (1994) (declaring that an "urban renewal project for an urban renewal area must not be planned or initiated unless the local governing body has, by resolution, determined such area to be a deteriorated or deteriorating area, or a combination thereof, and the local governing body has designated such area as appropriate for an urban renewal project"); KAN. STAT. ANN. § 17-4747(b) (1988) (allowing a municipality to prepare or have prepared an urban renewal plan, or permitting any person or agency, public or private, to submit to the municipality such a plan); ME. REV. STAT. ANN. tit. 30-A, § 5109(1) (West Pamphlet 1994) (stating that if municipal officers determine by resolution that the acquisition and development of vacant land, not within a slum or blighted area, is necessary to the proper clearance or redevelopment of slum or blighted areas or an essential component of the municipality's general slum-clearance program, then the acquisition, planning, preparation for development or disposal of that land constitutes an urban renewal project which, under specified circumstances, may be undertaken by the authority); N.Y. EXEC. LAW § 28-a(1) (McKinney 1993) (instructing that whenever a state disaster emergency has been declared any county, city, town or village included in the area affected by the disaster must prepare a local recovery and redevelopment plan, provided the municipality's legislative body does not determine that such a plan is unnecessary or impractical).

6. 1973 Cal. Stat. ch. 588, sec. 7, at 1111-12 (amending CAL. HEALTH & SAFETY CODE § 34013).

7. 1995 Cal. Legis. Serv. ch. 186, secs. 1, 2, at 560 (repealing CAL. HEALTH & SAFETY CODE §§ 34000-34014 and enacting CAL. HEALTH & SAFETY CODE §§ 34000-34009); *see* CAL. HEALTH & SAFETY CODE § 34000(a)(1) (enacted by Chapter 186) (declaring legislative intent behind Chapter 186: (1) "Floods, fires, hurricanes, earthquakes, storms, tidal waves, or other catastrophes are disasters that can harm the public health, safety, and welfare;" thus, "[c]ommunities need effective methods for rebuilding after disasters;" (2) "[t]he extraordinary powers of redevelopment agencies have been and can be useful in the reconstruction of buildings and in stimulating local economic activity;" and (3) "the procedures and requirements of the Community Redevelopment Law . . . restrict the ability of local officials to respond quickly after disasters"); *id.* § 34000(a)(2) (enacted by Chapter 186) (declaring that it is the intent of the Legislature to provide communities with alternative mechanisms for redevelopment after disasters).

8. CAL. HEALTH & SAFETY CODE § 34000(b) (enacted by Chapter 186).

9. *Id.* § 34001(a) (enacted by Chapter 186).

PROJECT AREA

Under existing law, the area that can be included in a redevelopment project area is limited to the territory that is predominantly urbanized and blighted.[10] Chapter 186 limits a disaster[11] redevelopment project area to land which is predominantly urbanized and to where the disaster damage has caused a serious physical and economic burden that cannot be reversed by private enterprise, government action, or both without redevelopment.[12] Furthermore, the definition of "predominantly urbanized" includes land that was or is developed for urban uses and adjacent land that is integral to the project.[13] However, the definition excludes poorly subdivided land.[14]

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10. *Id.* § 33320.1(a) (West Supp. 1995); *see also id.* § 33320.2 (West Supp. 1995) (authorizing areas within a project to be either contiguous or noncontiguous); *id.* § 33492.3 (West Supp. 1995) (stating that for any redevelopment project area formed, the area may include all, or any part of, property within a military installation that the federal Base Closure Commission has decided to shutdown).

11. *See id.* § 34002(a)(1) (enacted by Chapter 186) (defining "disaster" as "any flood, fire, hurricane, earthquake, storm, tidal wave, or other catastrophe occurring on or after January 1, 1996, for which the Governor of the state has certified the need for assistance and which the President of the United States has determined to be a major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288)"). *See generally* 42 U.S.C.A. §§ 5121-5204 (West 1995) (setting forth the Robert T. Stafford Disaster Relief and Emergency Assistance Act); *id.* § 5121(b) (West 1995) (declaring congressional intent to provide an orderly and continuing means of assistance by the federal government to state and local municipalities in fulfilling their responsibilities to alleviate disaster related suffering and damage, by doing the following: (1) revising and broadening of existing disaster relief programs; (2) encouraging the development of comprehensive disaster preparedness and assistance plans, and other like capabilities programs, through states and local governments; (3) attaining better coordination and responsiveness of disaster preparedness and relief programs; (4) encouraging individuals, states, and local governments to obtain insurance coverage to supplement or replace governmental assistance and thereby protect themselves more fully; (5) encouraging hazard mitigation measures to reduce disaster related losses; and (6) establishing federal assistance programs for losses sustained in disasters—both public and private).

12. CAL. HEALTH & SAFETY CODE § 34002(a)(2) (enacted by Chapter 186); *see id.* (defining "project area" as an area that is predominantly urbanized and one in which the disaster damage has caused conditions that are so prevalent and substantial that they have reduced the normal predisaster usage of the area to an extent that a serious physical and economic burden will be placed upon the area, one that cannot reasonably be expected to be reversed or alleviated during the term of the redevelopment plan); *see also id.* § 34002(b) (enacted by Chapter 186) (specifying that except as otherwise provided, all words, terms, and phrases shall have the same meaning as within the Community Redevelopment Law).

13. *Id.* § 34002(a)(3) (enacted by Chapter 186); *see id.* (defining "predominantly urbanized" as a situation where not less than 80% of the land in the project area meets the requirements of California Health and Safety Code § 33320.1(b)(1), (3)); *see also id.* § 33320.1(b)(1) (West Supp. 1995) (explaining that "predominantly urbanized" means that not less than 80% of the land in the project area has been developed for urban uses); *id.* § 33320.1(b)(3) (West Supp. 1995) (noting that "predominantly urbanized" means that at least 80% of the land in the project area is an integral part of one or more areas developed for urban uses which are surrounded or substantially surrounded by parcels which have been developed for urban uses; furthermore, parcels separated by only an improved right-of-way must be deemed "adjacent" for the purpose of California Health and Safety Code § 33320.1(b)).

14. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 2 (June 19, 1995).

REDEVELOPMENT SPENDING

Current law allows local officials to spend property tax revenues for redevelopment projects.[15] Chapter 186 limits the use of property tax increment funds received by a disaster redevelopment project to certain purposes.[16] Furthermore, Chapter 186 defines "last equalized assessment roll" and "base-year assessment roll" for purposes of taxes allocated pursuant to disaster area redevelopment plans.[17]

DEADLINE TO START

Prior to Chapter 186, California law did not set a deadline for local officials to start redevelopment after a disaster.[18] Chapter 186 requires local officials to commence proceedings within six months of a Presidential declaration of a major disaster, and to adopt a redevelopment plan within twenty-four months after the

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15. CAL. HEALTH & SAFETY CODE § 33670 (West Supp. 1995); *see* SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 2 (June 19, 1995) (noting that critics charge that local officials have used the disaster redevelopment law to spend redevelopment funds on efforts that were not directly related to the disaster).

16. CAL. HEALTH & SAFETY CODE § 34007 (enacted by Chapter 186); *see id.* (requiring a redevelopment agency that has adopted a redevelopment plan to limit the use of tax proceeds received pursuant to California Health and Safety Code § 33670 to acquiring, demolishing, removing, relocating, repairing, restoring, rehabilitating, or replacing buildings, low and moderate income housing, facilities, structures, or other improvements, which are within the project area, and have been damaged or destroyed by the disaster, making them unsafe to occupy, or which are required to be acquired, demolished, altered, or removed because of the disaster; however, nothing in California Health and Safety Code § 34007 will be construed to expand or diminish the authority of a redevelopment agency under Community Redevelopment Law); *see also id.* § 33670 (West Supp. 1995) (setting forth provisions for the division of taxes on taxable property in redevelopment projects).

17. *Id.* § 34006 (enacted by Chapter 186); *see id.* (stating that for purposes of California Health and Safety Code §§ 33328, 33670, and 33675, and for purposes of allocation of taxes pursuant to § 33670 and the provisions of any disaster area redevelopment plan, "last equalized assessment roll" and "base-year assessment roll" mean the assessment roll as reduced in accordance with California Revenue and Taxation Code § 170(b)); *see also id.* § 33328 (West Supp. 1995) (discussing base year assessment rolls and reports by tax officials); *id.* § 33675 (West Supp. 1995) (discussing the allocation and payment procedures of taxes for redevelopment projects); CAL. REV. & TAX. CODE § 170(a) (West Supp. 1995) (allowing for reassessment of property in the event of misfortune or calamity). *See generally* SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 3 (June 19, 1995) (discussing reduced assessment rolls as follows:

> Property tax increment revenues result from the growth in property values in a redevelopment project area. County assessors rely on the last equalized assessment roll to calculate a redevelopment project area's assessed values. When disasters damage property, county assessors may reduce assessed values. After several recent disasters, the Legislature has allowed local officials to use the newly-reduced property values instead of the last equalized assessment roll as the basis for computing property tax increment revenues. That practice boosts the amount of property tax increment revenues because it uses the lower values as the starting point. Under Assembly Bill 189, these reduced property values become the basis for calculating property tax increment revenues after a disaster.).

18. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 2 (June 19, 1995); *see id.* (stating that prior to AB 189 critics argued that local officials could wait several years to start a project area, relying on a past disaster to justify using the expedited procedures).

declaration.[19] Moreover, Chapter 186 authorizes the legislative body to issue an ordinance declaring there is a need for the agency to function in the community, and an ordinance adopting the redevelopment plans to be subject to referendum.[20]

PROJECT DEADLINES

Under existing law, time limits are set for redevelopment activities.[21] Officials have twenty years to create debt, thirty years for the effectiveness of a redevelopment plan, forty-five years to repay debts with property tax increment funds, and twelve years to start eminent domain proceedings to acquire property within the project area.[22] Chapter 186 requires a disaster redevelopment plan to set time limits beginning with the adoption of the redevelopment plan of ten years to establish loans, advances, and indebtedness to be paid with the proceeds of property taxes, ten years for the effectiveness of the plan, and thirty years to repay indebtedness with the proceeds of property taxes.[23]

RELOCATION REQUIREMENTS

Existing law requires local officials to have a relocation plan for people who are displaced because of redevelopment projects.[24] Chapter 186 allows officials to proceed with a disaster redevelopment plan without a relocation plan.[25] However, Chapter 186 does not eliminate the requirement to relocate displaced people; instead, Chapter 186 removes the requirement to adopt a relocation plan before adopting the disaster redevelopment plan.[26]

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19. CAL. HEALTH & SAFETY CODE § 34001(b) (enacted by Chapter 186).

20. *Id.* § 34003 (enacted by Chapter 186); *see* BLACK'S LAW DICTIONARY 1281 (6th ed. 1990) (defining "referendum" as the process of referring to the electorate for approval of a proposed new state constitution or amendment, or of a law passed by the legislature).

21. CAL. HEALTH & SAFETY CODE § 33333.2 (West Supp. 1995).

22. *Id.* § 33333.2(a) (West Supp. 1995); *see also id.* § 33333.2(b) (West Supp. 1995) (noting that if a redevelopment plan is amended to add territory, the amendment must contain the required time limits).

23. *Id.* § 34004(g) (enacted by Chapter 186); *see id.* § 34004 (enacted by Chapter 186) (providing that notwithstanding any provision of the Community Redevelopment Law, any redevelopment agency may plan, adopt, and implement a redevelopment plan, and the redevelopment agency and the legislative body of the community may approve such a redevelopment plan for a project in a disaster area pursuant to the Community Redevelopment Law, without regard to specified conditions); *id.* (listing the following requirements that may permissibly be disregarded: (1) that there be a planning commission and a general plan; (2) that the project area be a "blighted area" or selected by a planning commission; (3) that the redevelopment plan conform to a general plan; (4) that the redevelopment plan be submitted to the planning commission; (5) that the legislative ordinance adopting the redevelopment plan must contain findings that the area is a "blighted area" and that the plan conforms to the community's general plan; (6) the requirement of a "relocation findings and statement" or the requirement that a relocation plan be adopted prior redevelopment plan's adoption; and (7) specified time limits required by California Health and Safety Code § 33333.2).

24. *Id.* § 33367(d)(7) (West Supp. 1995).

25. *Id.* § 34004(f) (enacted by Chapter 186).

26. *Id.*; *see id.* (declaring that nothing in California Health and Safety Code § 34004(f) will be construed to eliminate the requirement that a redevelopment agency comply with the California Relocation Assistance Act); *see also* CAL. GOV'T CODE §§ 7260-7277 (West 1980 & Supp. 1995) (setting forth the California

ENVIRONMENTAL REVIEW

Under the California Environmental Quality Act (CEQA),[27] local officials are required to prepare an environmental impact report (EIR)[28] when they adopt a redevelopment plan.[29] Chapter 186 allows local officials to postpone the preparation of an environmental document on a redevelopment plan until after a disaster.[30] However, the local officials must certify an EIR or negative declaration[31] within twelve months of the ordinance adopting the redevelopment plan.[32] Until that is done, all projects that implement the plan are subject to the CEQA, including, but not limited to, specific plans and rezonings.[33]

SUBSEQUENT REDEVELOPMENT

Chapter 186 allows a community that adopted a redevelopment plan to include all or a portion of the project area within a separate redevelopment plan,

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Relocation Assistance Act).

27. *See* CAL. PUB. RES. CODE §§ 21000-21178.1 (West 1986 & Supp. 1995) (setting forth the California Environmental Quality Act (CEQA)).

28. *See id.* § 21061 (West 1986) (defining "environmental impact report").

29. CAL. HEALTH & SAFETY CODE § 33352(k) (West Supp. 1995); CAL. PUB. RES. CODE § 21151 (West Supp. 1995).

30. CAL. HEALTH & SAFETY CODE § 34005(a) (enacted by Chapter 186); *see id.* (stating that the CEQA will not apply to the adoption of a redevelopment plan if the redevelopment agency determines at a properly noticed public hearing that the need to adopt a plan at the soonest possible time in order to attain the authority in the Community Redevelopment Disaster Project Law requires the agency to delay application of CEQA provisions to the plan); *see also id.* § 33352 (West Supp. 1995) (requiring that every redevelopment plan submitted by the agency to the legislative body be accompanied by a report containing specified information); *id.* § 34005(d) (enacted by Chapter 186) (noting that the notice for the public hearing required by California Health and Safety Code § 34005(a) must comply with, and may be combined with, notices in California Health and Safety Code § 33349 or § 33361; furthermore, the notice must state that the agency intends to consider and act upon a determination that the need to adopt a redevelopment plan at the soonest possible time requires the agency to delay application of the CEQA provisions). *See generally id.* § 33349 (West Supp. 1995) (discussing the requirements for notice of hearing, including publication and mailing); *id.* § 33361 (West 1973) (providing that notice of a public hearing must be published not less than once a week for four consecutive weeks in a generally circulated newpaper published in the county in which the land lies).

31. *See* CAL. PUB. RES. CODE § 21064 (West 1986) (defining a "negative declaration" as a written statement briefly explaining why a proposed project will not have an environmentally significant effect and does not require the preparation of an environmental impact report).

32. CAL. HEALTH & SAFETY CODE § 34005(b) (enacted by Chapter 186); *see id.* (noting that if, as a result of the preparation of the environmental document prepared pursuant to this subsection it is necessary to amend the redevelopment plan to lessen or amerliorate any impacts, the agency must do so according to this part's procedures); *id.* (stating that if the environmental document is inadequate, the redevelopment agency must discontinue with projects implementing the redevelopment plan until an adequate document has been certified; however, this determination of inadequacy will not affect the revelopment plans validity).

33. *Id.* § 34005(c) (enacted by Chapter 186); *see id.* (requiring the environmental document for any implementing project to include an analysis of potential impacts, if any, that otherwise will be unknown until an environmental document for the redevelopment plan is certified or approved and must also include a program for reporting or monitoring); *see also* CAL. PUB. RES. CODE § 21081 (West Supp. 1995) (setting forth the findings necessary for a public agency to approve or carry out a project for which an environmental impact report has been certified).

provided that the standard project area meets all of the requirements of the Community Redevelopment Law.[34]

TERMINATION

Chapter 186 prohibits a community from adopting a redevelopment agency or a disaster redevelopment project plan on or after January 1, 2001.[35] After that date, there is no authority to adopt disaster redevelopment projects and local officials must rely on the standard redevelopment statute.[36]

COMMENT

Chapter 186 was enacted to rewrite and tighten the Disaster Project Law (DPL) in response to recent abuses of this law after the Northridge Earthquake.[37] The DPL was a section of redevelopment law that was enacted in the early 1960's.[38] This law allowed Crescent City to enact a redevelopment project after a tidal wave destroyed part of the town in 1964.[39] The language in the law allowed the project to be developed in an accelerated fashion by reducing public notice requirements, prohibiting the right of the people to vote on the adoption of the plan, and eliminating the requirement that the project area contain "blight."[40]

This language in the law, however, was never used until after the Northridge Earthquake when several cities adopted redevelopment plans using the authority

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34. CAL. HEALTH & SAFETY CODE § 34008 (enacted by Chapter 186).

35. *Id.* § 34009 (enacted by Chapter 186).

36. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 3 (June 19, 1995); *see* SENATE COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 978, at 3 (July 6, 1994) (discussing AB 978, a similar bill to AB 189 which never became law, that would have amended and then sunset the disaster redevelopment law; however, there was concern that repealing the law might call into question the continued legality of redevelopment projects that relied on the statute, so a recommendation was made that AB 978 merely prohibit any new projects from being formed under the disaster redevelopment law after a certain date, and AB 189 followed this approach).

37. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 189, at 3 (Apr. 19, 1995); *see* Eric Brazil, *State's Buildings Vulnerable in Earthquakes; S.F. Says It's Already Checking, Upgrading Structures*, S.F. EXAMINER, July 12, 1995, at A4 (commenting on the 6.7 magnitude Northridge earthquake, which struck at 4:31 a.m. on Jan. 17, 1994, killed 61 people, injured 9,000 others and caused nearly $12 billion in insured losses); Frank B. Williams, *Study Puts Quake Toll Up Another $6 Billion*, L.A. TIMES, June 3, 1995, at D1 (discussing a University of Southern California study released in June 1995 that estimates that the business losses caused by the Northridge earthquake were about $26 billion).

38. 1964 Cal. Stat. ch. 69, sec. 2, at 255-59 (enacting CAL. HEALTH & SAFETY CODE §§ 34000-34014).

39. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 189, at 3 (Apr. 19, 1995); *see* Kenneth Reich, *American Geophysical Union Meeting; Scientists Report Threat of California Tidal Waves*, L.A. TIMES, Dec. 10, 1992, at A3 (noting that 10 people were killed and 35 people were injured in Crescent City in 1964 when the port was struck by a tsunami generated by an Alaskan earthquake that also severely damaged Anchorage).

40. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 189, at 3 (Apr. 19, 1995).

of this dormant section.[41] These redevelopment plans have been criticized by the Legislative Analyst, as well as others, as abusive of the intent of the redevelopment law.[42] For example, Santa Clarita placed nearly the whole city under redevelopment and proposed over $1 billion in tax increment revenues.[43] Thus, Chapter 186 was enacted to rewrite the DPL so it is used by localities in response to legitimate disasters.[44]

Furthermore, although redevelopment has proven to be an effective device to restore downtowns, reassure investors, and attract private capital investment, the thirty year old Crescent City law no longer fits redevelopment in the 1990's.[45] Chapter 186 revises the 1964 law to fit the concerns of the 1990's.[46]

Opponents to Chapter 186 argue that when disaster strikes, local officials need the flexibility to rebuild their communities and local economies.[47] In fact, prior law allowed local officials to act faster than does Chapter 186.[48] For example, prior law allowed for shorter notice periods, side-stepped the need for a preliminary plan, and avoided the threat of referenda.[49] Since Chapter 186 requires disaster redevelopment plans to follow the standard redevelopment law,

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41. *Id.*; *see* SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 2 (June 19, 1995) (noting that after the 1994 Northridge earthquake, Los Angeles, San Fernando, Santa Clarita, and Santa Monica used the 1964 law to create disaster redevelopment projects).

42. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 189, at 3 (Apr. 19, 1995).

43. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 2 (June 19, 1995); *see id.* at 4 (noting that private insurance and federal aid will cover most of Santa Clarita's damage caused by the Northridge earthquake); *id.* (stating that although damage was not widespread in Santa Clarita, local officials used the 1964 law to set up a redevelopment project area that covers most of Santa Clarita; moreover, the plan seeks $1.139 billion in property tax increment revenues over 30 years, of which $466 million comes from the State General Fund); *id.* (noting that although AB 189 prevents another incident like the one in Santa Clarita, it is not retroactive).

44. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 189, at 3 (Apr. 19, 1995); *see also* SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 4 (June 19, 1995) (commenting that research from CSU-Sacramento shows that redevelopment is an effective, long-term tool for rebuilding communities hit by disaster).

45. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 4 (June 19, 1995); *see id.* (noting that the disaster redevelopment statute has not kept pace with changes in environmental review, public participation, affordable housing, and intergovernmental finance).

46. *Id.*

47. *Id.*

48. 1964 Cal. Stat. ch. 69, sec. 2, at 257-58 (enacting CAL. HEALTH & SAFETY CODE § 34013); *see* SENATE COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF SB 1155, at 3 (Jan. 15, 1992) (commenting that after disasters, public officials must balance the need for speed with the need to protect the public interest).

49. 1964 Cal. Stat. ch. 69, sec. 2, at 257-58 (enacting CAL. HEALTH & SAFETY CODE § 34013); SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 4 (June 19, 1995).

with specific exemptions, local officials cannot move as quickly.[50]

Michelle M. Sheidenberger

Property; substandard buildings

Government Code § 38773.5 (amended); Health and Safety Code § 17980.7 (amended); Revenue and Taxation Code § 3691 (amended).
AB 457 (Ducheny); 1995 STAT. Ch. 906

Existing law provides that state and local enforcement agencies must prosecute violations of the State Building Standards Code and local ordinances.[1] Existing law further permits a receiver[2] who is appointed by the court to take actions to correct the conditions that are cited in the violation.[3] Additionally, existing law requires that the receiver demonstrate to the court his or her supervisory capabilities.[4]

Chapter 906 amends existing law by authorizing the court, after discharging a receiver overseeing a substandard housing rehabilitation, to retain jurisdiction for a period not to exceed eighteen months.[5] Under Chapter 906, the court may

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50. SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS, COMMITTEE ANALYSIS OF AB 189, at 4 (June 19, 1995); *see id.* (noting that communities like West Oakland, Los Gatos, and Dunsmuir, which rushed to redevelop soon after their disasters, did not use the disaster redevelopment statute after all); *id.* (suggesting that taking the extra time to sort out community politics did not slow the pace of redevelopment over the long-term); *id.* (stating that although the timelines in AB 189 are slower than the 1964 law and not much faster than standard redevelopment, investing the extra time should avoid local controversies).

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1. CAL. HEALTH & SAFETY CODE § 17980(a) (West Supp. 1995); *see id.* (providing that if any building is constructed or maintained in violation of any building ordinance, the enforcement agency must, after a 30 day notice, bring appropriate action for prevention of the violation).

2. *See* BLACK'S LAW DICTIONARY 1268 (6th ed. 1990) (defining a "receiver" as a court-appointed person whose purpose is to preserve the property in litigation and to receive its rents and profits and utilize them at the court's discretion); *see also* CAL. HEALTH & SAFETY CODE §17980.7(c) (amended by Chapter 906) (providing requirements for appointment of a receiver).

3. CAL. HEALTH & SAFETY CODE § 17980.7(c)(4) (amended by Chapter 906); *see id.* (allowing the receiver to collect all rents and income from the substandard building, to borrow funds to pay for repairs cited in the notice of violation, and to borrow funds to pay for any relocation benefits authorized by California Health and Safety Code § 17980.7(c)(6)); *id.* § 17980.7(c)(6) (amended by Chapter 906) (requiring the receiver to provide relocation benefits if the conditions of the premises significantly affect the safe and sanitary use of the substandard building and render it impossible for the tenant to safely reside therein); *id.* § 17980.7(c)(4)(D) (amended by Chapter 906) (granting the receiver the power to enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation).

4. *Id.* § 17980.7(c)(2) (amended by Chapter 906); *see id.* (providing that a receiver must show that he or she can supervise the financial aspects of the substandard building and can also satisfactorily repair the building).

5. *Id.* § 17980.7(c)(10) (amended by Chapter 906); *cf.* CONN. GEN. STAT. ANN. § 47a-14h (West 1994) (authorizing a court to order the landlord to comply with the housing laws, appoint a receiver, award money damages, or order other proper relief); *id.* (stating that the court can retain jurisdiction over the building after the case has been settled in court); MASS. GEN. LAWS ANN. ch. 121B, § 26 (West 1986 & Supp. 1995)

require the owner and the enforcement agency responsible for enforcing the building standards to report to the court in accordance with a schedule determined by the court after a receiver is discharged.[6]

Under existing law, the legislative body can create a process whereby a nuisance[7] is abated and the cost of the abatement is assessed against that parcel.[8] Chapter 906 provides that a local agency that imposes an assessment can sell vacant, residential, developed property for the delinquent payment.[9]

Existing law further states that three years or more after the property becomes tax-defaulted and subject to a nuisance abatement, the tax collector can sell the property or any portion that has not been redeemed.[10] Chapter 906 further requires

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(authorizing a housing enforcement agency to conduct investigations, determine violations of substandard building codes, and appoint receivers); *id.* (authorizing a court to retain jurisdiction over the building after the receiver has been discharged). *But cf.* 1995 Tex. Gen. Laws, HB 1743 (authorizing an appointed receiver to maintain control of the substandard building and allowing the court to order the sale of the substandard building in certain instances, but providing that the court cannot retain jurisdiction over the building once the receiver is discharged).

6. CAL. HEALTH & SAFETY CODE § 17980.7(c)(10) (amended by Chapter 906).

7. *See* BLACK'S LAW DICTIONARY 1065 (6th ed. 1990) (defining a "nuisance" as activity arising from an unreasonable use of one's own property which produces an annoyance or inconvenience to another that the law will presume results in damage).

8. CAL. GOV'T CODE § 38773.5(a) (amended by Chapter 906); *see id.* (stating that the assessment can be collected in the same manner and time as ordinary municipal taxes, subject to the same penalties and procedures as municipal taxes); *see also* Conner v. City of Santa Ana, 897 F.2d 1487, 1493 (9th Cir. 1990) (stating that an ordinance that authorized the seizure of automobiles that were public nuisances was a valid exercise of the city's police power); City of Costa Mesa v. Soffer, 11 Cal. App. 4th 378, 383, 13 Cal. Rptr. 2d 735, 738 (1992) (holding that a provision of the California Vehicle Code which authorized the city to remove abandoned and wrecked vehicles as public nuisances was inconsistent with the statutory scheme for abatement that applied only to public nuisances); City of Los Angeles v. Shpegel-Dimsey, Inc., 198 Cal. App. 3d 1009, 1019, 244 Cal. Rptr. 507, 510-11 (1988) (holding that the city could not recover the cost it spent in stopping a fire that was a direct result of the defendant's public nuisance); People *ex rel.* Camil v. Buena Vista Cinema, 57 Cal. App. 3d 497, 503, 129 Cal. Rptr. 315, 318 (1976) (holding that a municipality may not arrogate greater rights and authority to itself to abate a nuisance of the exhibition of films than is allowed by state nuisance statutes).

9. CAL. GOV'T CODE § 38773.5(b) (amended by Chapter 906); *see id.* § 38773.5(a) (amended by Chapter 906) (requiring that notice be sent by certified mail to the property owner, if such owner can be determined from the county records); *id.* (stating that notice sent pursuant to California Government Code § 38773.5(a) must specify that the property may be sold after three years for unpaid delinquent assessments); *cf.* Commonwealth v. United Food Corp., 374 N.E.2d 1331, 1341 (Mass. 1978) (stating that the imposition of costs and fees is reasonable when the lawsuit is to enjoin a nuisance); Brandon Township v. Jerome Builders, Inc., 263 N.W.2d 326, 328 (Mich. Ct. App. 1977) (holding that a board that could remove a nuisance at the owner's expense had no right to recover the actual cost of the abatement, but could assess the expenses and collect them in the same manner as taxes are collected); City of Paterson v. Fargo Realty Inc., 415 A.2d 1210, 1213 (N.J. 1980) (holding that a statute which forced the landowner to be personally liable for abating a nuisance existing on his property was valid).

10. CAL. REV. & TAX. CODE § 3691(b)(1)(A) (amended by Chapter 906); *see id.* § 3691(b)(1)(B) (amended by Chapter 906) (stating that when a part of a tax-defaulted parcel is sold, the balance must be separately valued for the purposes of redemption); *see also* Sterling Realty Co. v. Relfe, 21 Cal. 2d 164, 167, 130 P.2d 410, 412 (1942) (holding that when more than one parcel is separately assessed, each parcel should be sold separately even if they have a common owner); Department of Pub. Works v. Fink, 226 Cal. App. 2d 19, 22, 37 Cal. Rptr. 724, 726-27 (1964) (holding that the tax collector's authority to sell property was terminated when taken by the state and devoted to public use due to unpaid taxes); 64 Op. Cal. Att'y Gen. 814, 815 (1981) (commenting that the Subdivison Map Act and ordinances enacted do not apply to the tax collector's sale of property pursuant to California Revenue and Taxation Code § 3691); 63 Op. Cal. Att'y Gen.

that the tax collector give actual notice[11] by certified mail to the property owner before a vacant residential parcel is sold.[12]

COMMENT

By enacting Chapter 906, the Legislature is responding to the bureaucratic problem that occurs when an owner repeatedly violates the housing standards which results in the re-opening of that owner's case.[13] For example, one tenant in Santa Ana litigated in court for more than five years over the landlord's substandard building conditions before reaching a settlement with his landlord.[14] Prior to Chapter 906, the law did not permit a court to retain jurisdiction after a receiver was discharged.[15] Chapter 906 is an attempt to provide more protection to those tenants who often do not pursue and protect their housing interests in the substandard building.[16]

Additionally, Chapter 906 does not mandate that the court retain jurisdiction, but only gives it discretion in retaining jurisdiction over the substandard housing.[17] Due to the purpose of Chapter 906, it is likely that the courts will not

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868, 868 (1980) (presenting the opinion that a tax appraiser can purchase property within the county at a tax-deeded land sale if he or she has not participated in the appraisal of the property and does not use county resources to purchase the property); 62 Op. Cal. Att'y Gen. 814, 815 (1979) (stating that the sale of tax-deeded property pursuant to California Revenue and Taxation Code § 3691 will discharge a federal tax lien if proper notice is given).

11. *See* BLACK'S LAW DICTIONARY 1061 (6th ed. 1990) (defining "actual notice" as notice that has been actually given and brought home to the party directly).

12. CAL. REV. & TAX. CODE § 3691(b)(2), (3) (amended by Chapter 906); *cf.* Coates v. Hewgley, 581 P.2d 929, 931 (Okla. Ct. App. 1978) (holding that there is a distinction between notice requirements for acquisition of valid certificate tax deeds and resale tax deeds); Commonwealth v. Lackawanna County Tax Claim Bureau, 422 A.2d 1218, 1219 (Pa. Commw. Ct. 1980) (stating that a taxing district's only interest in the sale of property for nonpayment of taxes is satisfaction of all tax claims against the property).

13. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 457, at 1 (Apr. 26, 1995).

14. *See* Jeannie Wright & Maria Newman, *Landlord Settles 1st in Series of Bitter Suits*, L.A.TIMES, July 3, 1990, at B1 (stating that tenant Mario Gonzalez reached a settlement with his landlord for $19,000 after battling in court for more than five years over the rodent-infested conditions at his apartment); *see also* Maitland Zane, *Tenants' Plea To Landlord—"Have a Heart,"* S.F. CHRON., Feb. 15, 1994, at A14 (stating that an apartment complex had returned to a debilitated condition in that an elevator did not work, garbage was not picked up, and there was a lack of hot water and heat during the winter, even after a citation of these violations had been issued to the owner previously).

15. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 457, at 2 (Apr. 5, 1995).

16. *See id.*; *see also* Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 537 n.13 (1992) (citing to Richard E. Miller & Austin Sarat, *Grievances, Claims and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525, 546 (1980-81)) (stating that socially disadvantaged individuals are less likely to protect and fight for their housing rights, than a person who is educated and knowledgeable).

17. CAL. HEALTH & SAFETY CODE § 17980.7(c)(10) (amended by Chapter 906); *see* Fox v. County of Fresno, 170 Cal. App. 3d 1238, 1244, 216 Cal. Rptr. 879, 883 (1985) (finding that although several references to "shall" are contained in California Health and Safety Code § 17980, the statute is not susceptible to mandatory interpretation and clearly gives the court discretion to choose which course of action would be appropriate).

question its validity because the Legislature is given wide discretion in housing regulation.[18] However, once a receiver is discharged, it is likely that all subsequent purchasers of the property will be required to have notice that the court still retains jurisdiction over the property.[19]

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18. *See* State v. Orange County Sup. Ct., 12 Cal. 3d 237, 250, 524 P.2d 1281, 1289, 115 Cal. Rptr. 497, 505 (1974) (holding that legislative bodies are given the discretion and power to adopt housing regulations that it deems reasonable and necessary); *see also* Second Nat'l Bank v. Loftus, 185 A. 423, 426 (Conn. 1936) (finding that since the legitimate purpose of the statute was to promote safe and healthy accommodations for occupants of multiple-family dwellings, the court would not question the Legislature's wide range of discretion in this area of law); Burlington & Summit Apartments v. Manolato, 7 N.W.2d 26, 28-29 (Iowa 1942) (upholding a law that if any building is constructed for human habitation does not meet the health standards, then the owner is not allowed to recover possession of the premises).

19. *See* Hawthorne Sav. & Loan Ass'n v. City of Signal Hill, 19 Cal. App. 4th 148, 162, 23 Cal. Rptr. 2d 272, 279 (1993) (holding that succeeding owners to a substandard building that is under the jurisdiction of a housing enforcement agency be put on notice of the pending actions for violation of California Health and Safety Code § 17980).